

Contentious issues of necessary defence in judicial practise

Abstract

The subject of this thesis is necessary defence, or more precisely some of its contentious issues that have been dealt with by Czech courts within the framework of their judicial practise. The fundamental focus of the thesis lies with the judicial decisions providing solutions to these issues, emphasis, on the other hand, is not placed on doctrinal concept of the legal institute. The thesis subjects some of the judicial decisions to evaluation and comparison with other judgments.

As for the structure, the thesis is divided into a total of seven chapters with regard to the elements of necessary defence that are primarily related to the issues dealt with by the judicial practice in each particular case. The first chapter presents a brief general outline of the topic, as it pursues, above all, the function of the legal institute of necessary defence, the way how it is established within the Czech law and the character of the relevant provision of the penal code.

Chapter two deals with integral prerequisites or structural elements of necessary defence, specifically attacker and defender subjects, as well as attack itself. It ponders about whether someone who is not primarily targeted by an attack can be deemed a defender. The same question is addressed regarding persons acting during heat of passion, voluntarily participating in skirmishes or working as a ticket inspector. With regard to attacker, the thesis pursues instances of defence against public officials and security workers. As for the attack element, the work focuses on thoughts on temporal range of attack and questions about what kind of conduct still fits into an assessment of attack.

Third chapter deals with potential excessiveness of necessary defence. This part is specifically addressing various ways of defence against various types of attack, with weapons used in exercise of defence in most of them.

Fourth chapter addresses issues of subsidiarity of necessary defence as it deals with situations which most likely could have been settled even by other means than via necessary defence.

The fifth chapter tackles a peculiar problem of preventive necessary defence and the usage of automatic defence mechanisms.

Chapter number six focuses on putative necessary defence, as it explores the conduct of perpetrators who, for whatever reason, wrongly thought that their actions had been justified with regard to necessary defence.

The seventh and the last chapter includes a couple of issues that were not, due to their nature, possible to incorporate into any of the previous chapters. These are the consequences of recognizing conduct as necessary defence with respect to adequate compensation for previous lawless detention and assessing conduct as necessary defence in relation to crime of failure to notify a criminal offence.

Keywords

necessary defence, judicial practice, contentious issues